(2009) 05 AHC CK 0056

In the Allahabad High Court

Faisal Timbers APPELLANT

Vs

Up-Nideshak (Prashashan/Vipadan), Rajya Krishi Utpadan Mandi Parishad and Others RESPONDENT

Date of Decision : 13-05-2009

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2009) 3 AWC 3094

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard learned Counsel for the petitioner and Sri Rajesh Kumar, learned Counsel for the respondents.

2. Petitioner before this Court is aggrieved by an order of the Deputy Director (Administration/Vipadan), Rajya Krishi Utpadan Mandi Parishad, Moradabad dated 30th December, 2008, whereby the revision filed by the petitioner u/s 32 of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 (hereinafter referred to as the Adhiniyam, 1964) has been rejected. Under the impugned order it has been recorded that the petitioner had committed an offence by trading in woods without obtaining necessary 9R receipts. Petitioner made an application for compounding of the said offence which was granted and compounding fee to Rs. 20,000 was levied upon the petitioner. It has been held that recovery of the compounding fee as such is legally justified and has been so directed only on the application made by the petitioner himself. The order so passed by the Deputy Director is being questioned before this Court only on the ground that under the provisions of Adhiniyam, 1964 respondents are only entitled to charge interest on the amount, which was not paid by the petitioner towards the mandi fee and cess. Reference in that regard has been made to Section 17 (3) of the Adhiniyam, 1964.

3. I have considered the submission made by the learned Counsel for the parties

and have gone through the records of the present writ petition.

4. For appreciating the controversy raised in the present writ petition on behalf of the petitioner, it would be worthwhile to reproduce Sections 17 (iiia), 37 and 37A of Adhiniyam, 1964, which read as follows:

17. Powers of the Committee....

(iii) levy and collect,-

...

(iiia) realise interest calculated in the manner prescribed in the bye-laws at the rate of two per cent per mensem on the unpaid amount of market fee from the date immediately following the period, prescribed for payment of market fee in the bye-laws.

37. Penalty.-(1) Any person who contravenes any of the provisions of Section 9 or Section 10 or the rules or bye-laws made thereunder shall, on conviction, be punished,-

(a) for the first offence, with fine which may extend to five thousand rupees ;

(b) for a second and any subsequent offence of the same nature with imprisonment which may extend to one year, or with fine which may extend to ten thousand rupees or with both and in case of continuing contravention, with a further fine up to rupees one thousand for every day subsequent to the date of second conviction or any subsequent conviction for which the contravention has continued:

Provided that in the absence of special and adequate reasons to the contrary mentioned in the judgment of the Court the fine for the first offence shall not be less than two hundred and fifty rupees and for the second or subsequent offence, shall not be less than five hundred rupees.

(2) Any person who contravenes any of the provisions of this Act or the rules or bye-laws made thereunder, except the provisions of Sections 9 and 10 and the rules and bye-laws made thereunder, shall be punishable with fine which may extend to two thousand rupees and in the case of continuing contravention with a further fine up to rupees two hundred for every day subsequent to the date of the first conviction for which the contravention has continued.

(3) Whenever any person is convicted of an offence punishable under this Act, the Magistrate shall, in addition to any fine which may be imposed, recover summarily and pay to the market committee, the amount of fee or any other amount, due from him under this Act or the rules or bye-laws made thereunder and may, in his discretion also recover summarily and pay to the market committee cost of the prosecution.

37A. Composition of offences.-(1) A market committee or its sub-committee or with the authorization by a resolution of a committee, its Chairman, may accept from any person who has committed or is reasonably suspected of having committed an offence punishable under this Act in addition to the fee or other amount recoverable from him, a sum of money not exceeding rupees [twenty thousand] by way of composition fee and compound the offence.

(2) On the composition of any offence under Sub-section (1) no proceeding shall be taken or continued against the person concerned in respect of such offence, and if any proceedings, in respect of that offence have already been instituted against him in any Court, the composition shall have the effect of his acquittal.]

5. From the simple reading of the above mentioned provisions it is apparent that the contention raised on behalf of the petitioner is misconceived. Proceedings u/s 17 (3) of the Adhiniyam, 1964 are absolutely independent proceedings, vis-a-vis penal proceedings which are contemplated under Sections 37 and 37A of Adhiniyam, 1964. It is admitted on record that the petitioner had not obtained requisite passes nor he had deposited requisite mandi fee and cess in respect of goods found at the place of his trading within the jurisdiction of Adhiniyam, 1964. Petitioner himself made an application for 6R receipts being issued in his favour in respect of goods so found and thereafter applied for compounding of offence. This application was allowed. 6R receipts were issued and compounding fee at Rs. 20,000 was levied. It is apparently clear that petitioner had committed of an offence within the meaning of Section 37 and was liable to penalty for the aforesaid offence. Petitioner opted for compounding of the same with reference to his application u/s 37A. On his application compounding fee has been levied and has been realized.

6. There is no illegality or infirmity in the order passed by the Deputy Director dated 30th December, 2008, so as to warrant any interference by this Court under Article 226 of the Constitution of India.

7. The writ petition lacks merit and is accordingly dismissed.

